

**Testimony of Samantha Koshgarian
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**Before the Committee on Human Services
Council of the District of Columbia**

Performance Oversight Hearing Regarding the Department of Human Services

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The Legal Aid Society of the District of Columbia¹ submits this testimony in support of the Department of Human Services' (DHS) Emergency Rental Assistance Program (ERAP). Over the years, Legal Aid has testified repeatedly about the need for adequate funding for this critical program, which can provide security deposits or first months' rent or pay rental arrearages to low-income District residents who have experienced an emergency affecting their housing security. Legal Aid is testifying today to reiterate our support for robust ERAP funding and express our concerns about issues with program administration and proposed regulations that would hamper ERAP's ability to provide housing stability for the District's low income residents.

ERAP remains one of the most effective tools the District has to offer to keep individuals and families in stable housing and prevent evictions. In our landlord-tenant practice, Legal Aid sees firsthand that ERAP funds are frequently the difference between housing and homelessness. Despite its effectiveness, year after year, ERAP is underfunded and unable to meet demand, a direct result of the District's housing affordability crisis. For the thousands of District families whose rent exceeds 50% of their monthly income, any emergency may cause them to fall behind on housing costs and face displacement or eviction as a result.

ERAP is demonstrably stabilizing housing for families who might otherwise face homelessness and require shelter stays or short or long-term housing subsidies. Given the higher costs of those kinds of assistance relative to an ERAP award, ERAP presents a remarkably cost-efficient way

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

to keep individuals and families housed in a rental market that presents significant affordability challenges for even the most capable and resourceful low-income families. Until the affordability crisis is resolved, robust ERAP funding, coupled with administration free from unnecessary and burdensome barriers to assistance is one of the best tools the city has to alleviate that burden.

ERAP's Underfunding Hampers Its Effectiveness

While much of the data provided lacks clarity, what is clear is that there is significant unmet community need for ERAP, primarily due to chronic underfunding of the program. In addition to the thousands of people who, based on DHS's own data, sought assistance without receiving it in FY2019, the lack of necessary funding becomes clear on a yearly basis as ERAP reaches a drought point at the end of each fiscal year.

In FY2019, for example, four of the six providers ran out of funds prior to the end of the fiscal year and stopped processing applications.² This exacerbates the difficulties of navigating among the various providers and creates even more demand for limited appointments by effectively reducing the number of providers by more than half. This means that a family is more likely to experience eviction simply based on the bad luck of experiencing an emergency close to the end of the fiscal year, regardless of the merit of their application for assistance. While DHS reports that for FY2019, 75 customers were denied assistance due to lack of funding (an increase from the 61 applicants denied in FY2018)³, this figure does not appear to account for those individuals who may have been prevented from applying in the first instance because of these providers stopped scheduling appointments based on their lack of funding. The real number is likely much higher.

The lack of adequate funding also leads to the reported practice of prioritizing individuals with judgments and live writs during periods of low funding.⁴ This policy, while understandable, creates a perverse incentive that legal services attorneys regularly see play out in Landlord-Tenant Court. Tenants often come before the Court with their landlord's attorneys to confess judgment, stating that they had been told by an ERAP provider that they could not receive assistance without a judgment or a writ. This leads to judgments on the tenants' records that make it more difficult to rent other properties in the future, and in cases where the tenants are ultimately not approved for assistance, accelerates the legal process toward eviction in cases that the tenant might otherwise have chosen to defend and resolved more favorably. Adequate funding would remove the need to prioritize based on the existence of a judgment or a writ, thereby removing the incentive for tenants to unnecessarily tarnish their rental records.

² Department of Human Services, Performance Oversight Questions, at 118.

³ *Id* at 117.

⁴ *Id* at 119.

ERAP Needs to Be More Accessible

Systems for Appointment Scheduling Remain Unmanageable for Tenants

While underfunding is the most critical accessibility issue, the practical administration of ERAP even in times when the program is well-funded make it difficult to access for those in need. Year-round, by far the biggest obstacle to assistance through ERAP that we see for our clients is simply getting in the door. The program is contracted out to six providers, each of which has slightly different processes for ERAP applicants. The general model across all providers is that certain days each month are designated for applicants to be able to call a specific phone line to make an appointment, generally first thing in the morning. The days and times during which applicants can call for appointments, as well as the phone numbers, vary from organization to organization. Several of the organizations schedule only one call-in day per month, meaning that a tenant who received information about ERAP after that date would have to wait for the next month before even being able to schedule an appointment with that provider.

The narrow and varied windows to call for an ERAP appointment are particularly troubling because even with good information regarding the call-in dates, it is extremely difficult to get through due to the high volume of calls. Anecdotally, we hear regularly from tenants who called repeatedly at the right time and date, but were still unable to schedule an appointment. From the data presented, for FY2019, while providers recorded 44,776 individuals who sought ERAP assistance either over the phone or in-person,⁵ only 3,968 applications for assistance were submitted.⁶ It is unclear from the data what accounts for this enormous discrepancy between the number of people seeking ERAP and the number who had an application processed. There is also a wide variance in the number of calls reported between providers, ranging from 900 for one provider in all of FY to more than 20,000 for another provider. This disparity does not correlate with contract size, but appears to be due in large part to the fact that providers are not reporting consistently – several providers indicate in responses that they have not tracked all calls, or that they are reporting only those individuals who successfully scheduled an appointment. This lack of consistent data is extremely troubling from an oversight perspective.

The difficulty in scheduling appointments, in addition to the fact that it may be two to four weeks between a call and the appointment to apply, puts tenants at a greater risk that they may experience eviction or lose an available unit they had otherwise been approved for before they even have the opportunity to apply for assistance. Properly funding ERAP would help to address some of these issues by allowing for more staff to process applications and a greater availability of appointments in any given month. This would also provide the council and providers with more accurate data reflecting community need and utilization of ERAP. More consistent data and transparent policies around administration would help ensure that ERAP is being fairly administered to all applicants and that the program applies funds where they are most likely to both prevent homelessness and preserve a tenancy for the long-term.

⁵ *Id* at 112.

⁶ *Id* at 114.

Online Appointment Scheduling Must Be Properly Administered and Transparent to Be an Effective Solution to Accessibility Barriers

As reflected in oversight responses, DHS did launch an online scheduling option in March 2019.⁷ We are encouraged by the move toward additional and less onerous scheduling options. However, the implementation of this option left a lot to be desired. Legal Aid, for example, found out that this option existed only after calling a provider on a designated call-in day and being told that they were no longer scheduling appointments by phone and it would need to be done online. At that point, they directed us to the portal on the DHS website, which was in beta mode. At this time, however, and for at least the last month, the online portal has been completely unavailable, and offers only information on the call-in dates.

When the portal was available, it did not provide clear, substantive information about the process or timeline for scheduling appointments based on requests through the portal. This led to additional uncertainty for the clients we advised who tried to schedule appointments through the portal. Many of these clients ended up calling on each call-in date in addition to utilizing the portal because they were so unsure about their likelihood of actually being able to schedule through the portal, and because they did not know the time frame their appointment would be scheduled within. As such, the existence of the portal did not prevent them from jumping through hoops to schedule an appointment, or remove them from the numbers of tenants trying to get through on the phone lines on any given date. Responses also indicate that of the 857 clients who were scheduled through the online portal, only 370 attended their scheduled appointment.⁸ Without more information, it is impossible to determine why this rate might be so low, but it is clear that the portal is not an effective means of accessing ERAP. Furthermore, it is particularly troubling that the online portal is not operating more effectively because DHS indicated that the agency considers it to be a reasonable accommodation for individuals with disabilities seeking ERAP. A poorly functioning or unavailable online portal clearly does not meet DHS's obligation to accommodate those applicants with disabilities.

Families experiencing emergencies and seeking assistance through ERAP must be able to plan around their efforts to get assistance. It is critical that DHS work with providers to create workable, effective scheduling solutions to reduce the burden on those seeking assistance to simply get in the door.

The Department's Proposed Regulations Create New and Unnecessary Barriers to Assistance

DHS proposed new ERAP regulations in September 2019. Agency oversight responses indicate that comments on these regulations are currently under review by the Office of General Counsel with an expected completion date of February 2020.⁹ We are concerned that a number of the new regulations, as proposed, would create additional barriers for tenants seeking ERAP assistance without meaningfully improving ERAP outcomes. In October, we, along with Bread for the City,

⁷ *Id* at 113.

⁸ *Id.*

⁹ *Id* at 119.

Children’s Law Center, Legal Counsel for the Elderly, Neighborhood Legal Services Program, and Washington Legal Clinic for the Homeless jointly submitted comments regarding these proposed regulations. We will discuss our most pressing concerns here, and have attached our comments for the Committee’s further reference.

DHS Should Not Limit ERAP to Preventing Homelessness

Broadly, we are concerned that the proposed regulations would for the first time identify “preventing homelessness” as the sole purpose of ERAP. While we agree that this is a critical purpose served by ERAP, the program historically has also served the important purpose of providing housing stability for low-income families that experience housing emergencies but who may not be at imminent risk of homelessness. We are concerned that the increasing focus on ERAP as a homelessness prevention tool to the exclusion of other purposes will essentially require families to reach a more acute crisis point before accessing assistance. This not only makes it more likely that families who reach that point but do not ultimately receive assistance will then experience homelessness, but families will experience collateral consequences of that increased proximity to homelessness, including missed work to attend additional court dates, reduced school engagement, increased stress, and related health outcomes, and others. These are entirely avoidable outcomes. We encourage the Council to support ERAP both as a homelessness prevention tool and as a tool to promote housing stability for low-income District families.

We Oppose the Move Toward Mandatory Case Management Services For ERAP Applicants

Relatedly, the proposed regulations move further in the direction of requiring all ERAP recipients to participate in case management as a condition of assistance. This kind of blanket prescription for services is burdensome and inefficient. Given ERAP’s funding history and high demand, we cannot afford to waste limited resources on case management services for families applying for ERAP who have not been individually assessed as needing such services.

To ensure consistency and application of best practices, to the extent that providers are authorized to make case management services a condition of assistance, DHS should provide thorough guidance regarding how to determine whether ongoing case management services would effectively address the circumstances that led to the need for assistance. It is well-recognized that the District has an affordable housing crisis. The fact is that for low-income families in the District, low wages and lack of affordable housing often means that one medical emergency or reduction in work hours can mean an imminent risk of eviction. For families in this situation, the problem is not a need for case management – there is simply not enough money to get through the emergency. This is precisely the need that ERAP is designed to fill. DHS has pointed to the incidence of repeat ERAP applications to suggest that those clients who are seeking assistance in multiple years would obviously benefit from case management – this applies a broad diagnosis that does not acknowledge the reality of DC’s rental market.

Ultimately, the reason families need ERAP assistance in multiple years is not because they need comprehensive services – it is because the housing affordability crisis in the District persists and deepens with each passing year. To require those families to engage in more comprehensive

programming to receive that assistance does nothing but create an additional unnecessary burden on the already-scarce time resources of the family and fiscal resources of DHS homelessness programming.

Proposed Regulations Unfairly Distinguish Between Tenants Who Live in Subsidized Housing and Tenants Who Do Not Receive Subsidies

The proposed regulations will also create new barriers to assistance specific to those applicants who receive housing subsidies. For example, under the proposed regulations, applicants who do not receive housing subsidies would be eligible to receive more than five months in back rent, and are eligible for an award of up to \$6000 if they have a household member with a disability. For those tenants with housing subsidies, however, they are limited to five months of the tenant portion without the provision permitting waiver of that limit for households with a household member who has a disability.

As an initial matter, we believe these regulations violate District law by discriminating on the basis of an applicant's source of income.¹⁰ Even aside from the possible violation of the law, there is simply no good justification for treating those in subsidized and unsubsidized housing differently for purposes of ERAP. The idea that ERAP should be limited for households receiving a subsidy appears to be based on two misperceptions – one, that families receiving subsidies are not at risk of falling behind on their rent due to an emergency, and two, that families dealing with one-time emergencies can easily work out rent adjustments or affordable repayment agreements with the Housing Authority. However, the re-certification process was not designed to cover many emergencies – such as unexpected medical expenses, theft of property, necessary car repairs that will allow tenants to get to work, etc. And tenants experience significant difficulties when they try to work out payment plans as we believe DHS is contemplating. DCHA may be unwilling to agree to a repayment schedule that is actually affordable for the tenant, or may use the opportunity to extract additional concessions from the tenant which would otherwise not be available without a separate legal process, such as requiring them to remove an adult child from their household or pay additional fees that the tenant would otherwise contest. It is also important to remember that not all subsidy programs are administered through DCHA and that even those that are may also involve a private landlord who may not follow policies set by DCHA. Whether households receive subsidies or not, ERAP serves distinct and important purpose, and there is no reason to treat households receiving subsidies differently. The many other showings required of a tenant to receive ERAP approval are an adequate safeguard against abuse or waste of these funds, without singling out often particularly vulnerable families living with housing subsidies and preventing them from receiving critical assistance that will enable them to stay in long-term, meaningfully affordable housing.

¹⁰ See D.C. Code § 2-1401.01.

Additional Changes in Proposed Regulations Will Act As Barriers to Assistance With No Sound Policy Justifications

In addition to the broader systemic concerns outlined above, the proposed regulations contain a number of changes that would operate as barriers to assistance and that are not justified by legitimate policy goals. First, for the first time the regulations would require families eligible for ERAP on the basis of an applicant or household member's disability to be receiving federal disability benefits to be eligible on this basis. This is not in line with definitions of disability in DC law, and it is not a good determinant of whether someone has a disability, as receipt of federal benefits requires much more than just a showing that a person has a disability. Even in the best case scenario, federal disability benefits can take years to be approved. In reality, they are often wrongfully denied and terminated, as we see in Legal Aid's Public Benefits practice every day. ERAP providers should continue to make determinations regarding eligibility based on disability in accordance with DC law.

Second, the proposed regulations would also require providers to verify information, where previously, verification was discretionary, allowing providers to seek verification when information in an application raised concerns, but otherwise, permitting them to proceed with processing. Requiring providers to seek verification even absent any indication that information may not be reliable will unnecessarily delay assistance and lead to wrongful denials for assistance. Providers should be able to use discretion to seek verification only where there is a basis for concern.

This is compounded by another issue, which is that the proposed regulations shorten the time for an application to be completed from 60 days to 45 days. Because applicants are frequently relying on third parties like employers and landlords to provide necessary information, and because applicants do not always receive consistent information about what is required, many applicants struggle to complete an application even under the current 60-day period. Shortening that period will lead to denials of meritorious applications, particularly coupled with mandatory verification of information provided by applicants. It is also an unnecessary change – the very fact of their housing being threatened provides adequate assurance that applicants will do whatever they can to complete their applications as quickly as possible.

We urge the Council and DHS to ensure that the regulations that go into effect make the administration of ERAP more effective and promote accessibility, in recognition of the critical role the program plays in housing security and stability for low-income District residents.

Conclusion

We appreciate the opportunity to testify about the importance of ERAP. We urge the Mayor and the Committee to fund the program at levels fully consistent with community need. Further, we urge the Committee to ensure that DHS makes the program fully accessible to tenants in danger of losing their housing.